



**CALIFORNIA TEACHERS ASSOCIATION**

DEPARTMENT OF LEGAL SERVICES

PUBLIC EMPLOYMENT  
RELATIONS BOARD  
HEADQUARTERS OFFICE  
2007 APR 25 PM 12:46

April 23, 2007

Tami Bogert, General Counsel  
Public Employment Relations Board  
1031 – 18<sup>th</sup> St.  
Sacramento, CA 95814

**RE: Proposed Agency Fee Regulations**

Dear Ms. Bogert:

On behalf of the California Teachers Association I write to offer comment on the proposed change to PERB Regulation 32992(b), which was announced at the Board meeting on April 12 and set for a 15-day comment period then.

We approve of the concept of splitting subparagraph (b) into two paragraphs to make clear that unions with under \$50,000 in annual revenues may meet legal requirements with an unaudited financial report and therefore do not have to include an audited report in their *Hudson* notice. Therefore, we have no objection to subparagraph (2) of the proposed 32992(b).

However, we are concerned that there is an ambiguity in subparagraph (1). This requires that the *Hudson* notice include either “a copy of the audited financial report used to calculate the chargeable and nonchargeable expenditures or a certification from the independent auditor that *the summarized chargeable and nonchargeable expenditures contained in the notice have been audited and correctly reproduced from the audited report, ...*” (Emphasis added.) We are concerned that the italicized phrase could be interpreted by some to require an allocation audit, i.e. that the auditors verify that the union has properly allocated its expenditures between chargeable and non-chargeable expenses.

As you know, *Cummings v. Connell* (9<sup>th</sup> Cir. 2003) 316 F. 3d 886, 893 specifically rejected a claim that the union was required to provide an allocation audit. Any different interpretation “would have the auditor making a legal, not an accounting, decision regarding the appropriateness of the allocation of expenses.” quoting *Andrews v. Education Association of Cheshire* (2d Cir. 1987) 829 F. 2d 335, 340.

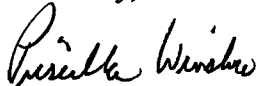
We continue to believe that the language we originally proposed accurately reflects the law and avoids the potential for any ambiguous understanding concerning the type of financial data agency fee payers are entitled to receive. Thus, subparagraph (1) would read:

**The calculation of the chargeable and nonchargeable expenditures will be based on an audited financial report, *and the notice will include a copy of the audited financial report used to calculate the chargeable and nonchargeable expenditures. All such calculations shall be made on the basis of an independent audit that shall be made available to the nonmember.***

Since this paragraph will be followed by proposed subparagraph (2) which addresses the *Harik* exception, there is no danger that unions with annual revenues under \$50,000 would be required to conduct an independent audit.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script, appearing to read "Priscilla Winslow".

Priscilla Winslow  
Assistant Chief Counsel